

1 REBECCA D. EISEN, SBN 96129  
THERESA MAK, SBN 211435  
2 M. MICHAEL COLE, SBN 235538  
MORGAN, LEWIS & BOCKIUS LLP  
3 One Market, Spear Street Tower  
San Francisco, CA 94105-1126  
4 Tel: 415.442.1000  
Fax: 415.442.1001

5 CHRISTOPHER A. PARLO, *Pro Hac Vice*  
6 MORGAN, LEWIS & BOCKIUS LLP  
101 Park Avenue  
7 New York, NY 10178  
Telephone: 212.309.6000  
8 Facsimile: 212.309.6273

9 Attorneys for Defendant  
10 METROPOLITAN LIFE INSURANCE  
COMPANY

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 JON PAUL SIMS, MICHAEL B.  
16 BAGLEY, and JEFFERY A. PFEIFFER,  
each individually, and on behalf of all  
others similarly situated,

17 Plaintiff,

18 vs.

19 METROPOLITAN LIFE INSURANCE  
20 COMPANY AND DOES 1 THROUGH  
21 100, inclusive,

22 Defendant.

Case No. 05 CV 2980 (TEH)

**STIPULATION TO FILE  
COUNTERCLAIMS; ~~PROPOSED~~  
ORDER**

District Court Judge Thelton E. Henderson

1 WHEREAS, on or about June 14, 2005, Plaintiff Jon Paul Sims ("Plaintiff" or "Sims")  
2 filed this action in the Superior Court of California for the County of Sonoma, said case number  
3 being 236894;

4 WHEREAS, on or about July 21, 2005, Defendant Metropolitan Life Insurance Company  
5 ("MetLife" or "Defendant"), removed said action to the United States District Court for the  
6 Northern District of California;

7 WHEREAS, on or about June 15, 2006, Plaintiff filed a Notice of Motion and Motion for  
8 Leave to file a First Amended Complaint which, among other things, sought to add Michael B.  
9 Bagley and Jeffrey A. Pfeiffer as named Plaintiffs;

10 WHEREAS, on July 6, 2006, the parties stipulated to the filing of said First Amended  
11 Complaint and Defendant expressly reserved the right to assert counterclaims against Plaintiffs;

12 WHEREAS, on July 11, 2006, pursuant to the parties' stipulation, said First Amended  
13 Complaint was filed;

14 WHEREAS, in light of Plaintiffs' First Amended Complaint, Defendant seeks to assert  
15 Counterclaims against Plaintiffs for Unjust Enrichment and Setoff/Recoupment;

16 WHEREAS, Defendant agrees not to assert the Plaintiffs' stipulation herein as a  
17 defense to any legal challenge brought by the Plaintiffs as to the legal sufficiency, validity,  
18 propriety, or merits of the Counterclaims, or otherwise use Plaintiffs' stipulation in the defense of  
19 MetLife in this matter.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, between the  
2 parties that:

3 (1) Defendant will file its Counterclaims. The proposed Counterclaims, attached hereto as  
4 a separate document, shall be and hereby is deemed filed and served on all parties as of the date  
5 of this Stipulation and Order; and

6 (2) Plaintiffs expressly shall retain any and all rights and defenses, including the right to  
7 challenge the merits of the Counterclaims, their appropriateness or legal sufficiency by any means  
8 whatsoever including but not limited to motions, demurrer, motion to strike, motion for judgment  
9 on the pleadings, etc.

10  
11 Dated: August 11, 2006

MORGAN, LEWIS & BOCKIUS LLP

12 By: Rebecca Eisen (cm)  
13 Rebecca D. Eisen  
14 Attorneys for Defendant  
15 METROPOLITAN LIFE INSURANCE  
COMPANY

16 Dated: August 14, 2006

THE EDGAR LAW FIRM

17 By: Donald S. Edgar  
18 Donald S. Edgar  
19 Jeremy R. Fietz  
20 Attorneys for Plaintiffs

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22  
23 Dated: August 15, 2006

Hon. Thelton E. Henderson

